CHRISTINE HANSEN MONROE

IBLA 87-764 Decided December 11, 1989

Appeal from a decision by the Alaska State Office, Bureau of Land Management, rejecting Native Allotment application AA 56291.

Affirmed.

1. Alaska: Native Allotments

An Alaska Native allotment application is not approved under sec. 905(a)(1) of the Alaska National Interest Lands Conservation Act, 43 U.S.C § 1634(a)(1) (1982), where the land is included in a State selection application filed on or before Dec. 18, 1971. Under sec. 905(a)(4), such an application shall be adjudicated pursuant to the requirements of the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970).

2. Alaska: Native Allotments--Alaska: Statehood Act

An application for a Native Allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land.

APPEARANCE: Christine Hansen Monroe, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Christine Hansen Monroe appeals from a decision dated July 7, 1987, by the Alaska State Office, Bureau of Land Management (BLM), rejecting her Native Allotment application AA-56291, filed for approximately 60 acres of unsurveyed land located in secs. 9 and 16, T. 17 S., R. 45 W., Seward Meridian, Alaska.

Appellant's application was apparently filed with the Bureau of Indian Affairs (BIA) on February 12, 1971, pursuant to the Alaska Native Allotment Act, 43 U.S.C. §§ 270-1 through 270-3 (1970), repealed by 43 U.S.C. § 1617(a) (1982) except as to applications pending before the Department on December 18, 1971. BIA forwarded the application to BLM on November 30, 1984, and certified the claim. On the application, appellant

states she used the land from November 1964 through the date the application was signed (December 10, 1970) for hunting, berrypicking, and subsistence living "whenever necessary," adding: "Born: July 18, 1948 in Clark's Pt. Moved to Naknek in 1964. Use the land mainly for picking berries and hunting. No particular date of actual use."

BLM conducted a field examination with appellant on June 3, 1986. The field report, which was approved June 12, 1986, notes she claimed berrypicking on the land from 1967, that the natural resources to support this use were present, that her personal knowledge of the parcel was good, but that there were no man-made or other signs of use of the parcel. The report concluded: "Based on the above information, it is concluded that the applicant has not shown substantial use and occupancy potentially exclusive of others as required by 43 CFR 2561."

BLM's decision states in pertinent part:

> The lands were withdrawn by Public Land Order (PLO) 255 from December 15, 1944 to June 23, 1960. On June 23, 1960, PLO 2133 revoked PLO 255, but gave the State of Alaska prefer-red right of application to select the lands within PLO 255 until September 22, 1960. On September 22, 1960, the State of Alaska filed selection application A-053268 for those lands formerly within PLO 255. On December 4, 1974, Paug-Vik Incorporated, Limited, filed selection application AA-6680-B for these lands pursuant to the Alaska Native Claims Settlement Act. The lands were conveyed to Paug-Vik Incorporated, Limited on November 27, 1979. Therefore, the lands described in Native allotment AA-56291 have been reserved and appropriated since December 15, 1944.
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> Our records indicate the date of birth for Christine (Hansen) Monroe to be July 18, 1948. As the lands within Native allotment AA-56291 have been reserved since December 15, 1944, four years before the applicant's birth, the application must be and is hereby rejected in its entirety. When this decision becomes final Native allotment application AA-56291 will be closed of record.

Appellant asserts in her statement of reasons that she should receive the allotment because she followed prescribed procedures and met all deadlines in filing her application.

[1, 2] Section 905(a)(1) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a)(1) (1982), approved, subject to certain exceptions, Native allotment applications pending before the Department on or before December 18, 1971, for land which was "unreserved on December 13, 1968." Section 905(a)(4), 43 U.S.C. § 1634(a)(4) (1982), excepts from this approval applications that describe land validly selected by the State of Alaska pursuant to the Alaska Statehood Act and provides that such applications "shall be adjudicated pursuant to the requirements

of the Act of May 17, 1906, as amended, the Alaska Native Claims Settlement Act, and other applicable law."

The lands in appellant's application were not unreserved on December 13, 1968. They were included in one of the areas "withdrawn from all forms of appropriation under the public-land laws * * * and reserved for the use of the War Department for military purposes" by Public Land Order No. 255 on December 15, 1944, by Abe Fortas, Acting Secretary of the Interior. 11 FR 8368-70 (Aug. 2, 1946). Although it is not indicated on the Master Title Plat or the Historical Index for T. 17 S., R. 45 W., Seward Meridian, an examination of the file for State Selection A-053268 confirms that all of both secs. 9 and 16 were selected by the State of Alaska on September 22, 1960, and were thus segregated in accordance with 43 CFR 2627.4(b).

An application for a Native allotment must be rejected if the alleged use and occupancy commenced after the time that a State selection application was filed for the land. William M. Tennyson, Jr., 66 IBLA 38, 40 (1982). A Native who applies for reserved or withdrawn land must show that he or she complied with the law, or at least initiated use and occupancy, prior to the effective date of the reservation or withdrawal. Id. Appellant does not allege she initiated her use of the lands she applied for before the State of Alaska selected them in 1960, and could not have done so before they were withdrawn for military purposes in 1944. Therefore, BLM properly rejected her Native Allotment application.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Will A. Irwin
Administrative Judge

I concur:

John H. Kelly
Administrative Judge